

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

United States of America

*

v.

*

Criminal Case No. DKC 18-CR-222

JOSEPH BENJAMIN O'DONNELL

*

MEMORANDUM OPINION and ORDER

Joseph Benjamin O'Donnell is charged in a single count indictment with Failing to Register as a Sex Offender in violation of 18 U.S.C. § 2250. He has moved to dismiss the indictment, challenging the retroactive application of the statute, enacted in 2006, to him because his qualifying prior conviction occurred in 2005. He asserts that the retroactive application to him, based on Congress' delegation of authority to the Attorney General, violates the constitution. As he acknowledges, similar challenges have been rejected by the United States Court of Appeals for the Fourth Circuit, albeit in unpublished opinions. *See, e.g., United States v. Sampsell*, 541 F.App'x 258, 259-60 (4th Cir. 2013). Other circuits similarly rejected the challenges. *United States v. Guzman*, 591 F.3d 83, 91-93 (2d Cir. 2010). Now, however, the United States Supreme Court has granted certiorari in *Gundy v. United States*, No. 17-6086, to review the question whether the SORNA delegation of authority to the attorney general to issue regulations under 42 U.S.C. § 16913 violates the nondelegation doctrine. Briefing will take place this summer and, presumably, the Court will hear argument during the October 2018 Term. Mr. O'Donnell filed the motion to preserve his constitutional claims while the Court considers *Gundy*. Counsel have indicated that they do not seek to stay this case pending resolution of the issue by the Supreme Court.

Accordingly, in light of the current state of the law, the motion to dismiss is DENIED.

June 27, 2018

/s/

DEBORAH K. CHASANOW
United States District Judge